

**ITEL**  
**CORPORATION**  
TRANSPORTATION SERVICES GROUP

RECORDATION NO. *9538 A* Filed & Recorded

JUL 26 1978 3 31 PM

INTERSTATE COMMERCE COMMISSION

RECEIVED  
JUL 26 3 31 PM '78  
I.C.C. BR.  
FEE OPERATION BR.

July 24 1978

Hon. H. G. Homme  
Acting Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

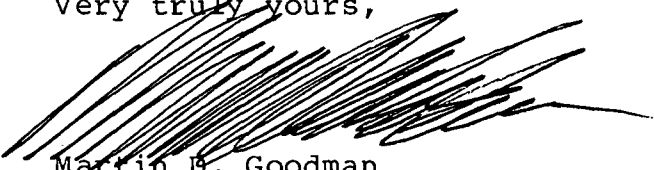
Dear Sir:

Enclosed for filing with and recording by the Interstate Commerce Commission are five copies of a Schedule to that certain Master Lease dated as of June 20, 1978, between NCNB Leasing Corporation, P. O. Box 120, Charlotte, North Carolina, 28255, and Itel Corporation, acting through its Rail Division, Two Embarcadero Center, San Francisco, California, 94111. The foregoing Master Lease was filed with the interstate Commerce Commission on July 12, 1978 at 3:20 p.m. and assigned recordation number 9538. The attached Equipment Schedule covers cars numbered VSO 6300-6349, inclusive which cars bear the identifying marks: "NCNB Leasing Corporation, Owner/Lessor pursuant to a Lease Agreement filed with the Interstate Commerce Commission under Section 20c".

Also enclosed is this Company's check in the sum of \$10.00, payable to the Interstate Commerce Commission, being the prescribed fee for filing and recording the foregoing Conditional Sale Agreement.

Please return all additional copies of the enclosed counterparts not required by the Interstate Commerce Commission to David Schwartz, Esq., of Sullivan and Worcester, who will be delivering this letter on our behalf.

Very truly yours,

  
Martin B. Goodman  
Vice President-Legal Services

MDG:mc  
Enc.

8-207A160

Date JUL 26 1978

Fee \$ 10

ICC Washington, D.C.

**Interstate Commerce Commission**  
**Washington, D.C. 20423**

**7/26/78**

**OFFICE OF THE SECRETARY**

**Martin D. Goodman  
Itel Corporation  
Two Embarcadero Center  
San Francisco, Calif. 94111**

**Dear Sir:**

The enclosed document(s) was recorded pursuant to the  
provisions of Section 20(c) of the Interstate Commerce Act,  
49 U.S.C. 20(c), on **7/26/78** at **3:35pm**  
and assigned recordation number(s) **9538-A**

Sincerely yours,

**H.G. Homme, Jr.,  
Acting Secretary**

**Enclosure(s)**

**SE-30-T  
(2/78)**

SCHEDULE TO MASTER LEASE

Schedule No. 9001154702

A. EQUIPMENT LEASED:

- 50 FMC Corporation XM Boxcars, 70 Ton, 50 Ft. 6 In.  
Road #s VSO 6300 thru 6349 inclusive.

RECORDATION NO. 9538-A  
Filed & Recorded

JUL 26 1978 3 25 PM

INTELLIGENCE COMMERCE COMMISSION

- B. TERM: Unless sooner terminated as set forth in the lease, the term of this lease respecting each item of equipment listed on this schedule expires on August 1, 1993
- C. RENT: As rent for said equipment, lessee shall pay lessor the sum of \$ 2,678,616.00 Plus Taxes Except as otherwise provided in the lease or in this schedule said rent shall be payable in 60 Quarterly installments, commencing on November 1, 1978 as follows:

Sixty (60) Quarterly Installments of \$44,643.60 Plus Taxes Commencing On November 1, 1978.

Unless sooner paid, all said rent shall be payable in any event on or before the expiration or sooner termination of this lease.

- D. LOCATION: The above described equipment shall be located at On railroad trackage within the U.S.A. and shall not be removed therefrom without the prior written consent of lessor.

- E. DEPOSIT: \$ N/A, pursuant to paragraph 16 of the lease of which this schedule is a part.

F. SPECIAL CONDITIONS:

See Schedule "A".

APPROVED AND AGREED TO this 20th day of June, 1978, as  
a schedule to that certain lease dated the 20th day of June, 1978,  
by and between the parties hereto, and made a part hereof.

Lessor:

NCNB LEASING CORPORATION

By James C. Carlisle  
Title James C. Carlisle  
Senior Vice President

Lessee:

IteI Corporation, Rail Division  
Name of Lessee  
By Donald H. Gleason  
Title Donald H. Gleason  
Vice President  
By  
Title

Lessee

One NCNB Plaza, Charlotte, North Carolina 28255

(Seal)  
Two Embarcadero Center  
Address San Francisco, CA 94111

# SCHEDULE "A"

Page 1 of 5

This schedule is to be attached to and becomes part of Schedule To Master Lease

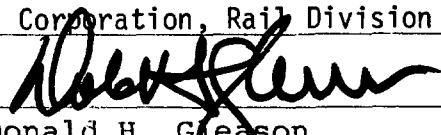
dated June 20, 19 78, between the undersigned and NCNB Leasing Corporation

Paragraph 4 is deleted and amended as follows: Use. Lessee shall pay all expenses of operation and maintenance of the equipment. Lessee shall comply with and conform to all national, state, municipal, police, and other laws, ordinances and regulations in anywise relating to the possession, use or maintenance of the equipment. So long as there shall be no default under this lease, the lessee shall be entitled to the possession of the equipment and shall be entitled (i) to the use of the equipment by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the lessee or any such affiliate is regularly operated pursuant to contract, (ii) to permit the use of the equipment upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements and (iii) to sublease any unit of equipment to other companies incorporated under the laws of any state of the United States or the District of Columbia, for use in connection with their operations, but only upon and subject to all the terms and conditions of this lease; provided, however, that the lessee shall not assign or permit the assignment of any unit of equipment to service involving the regular operation and maintenance thereof outside the United States of America. Lessee shall, whenever requested by lessor, advise lessor of the exact location of any and all equipment. Lessee agrees not to sell, assign, sublet, pledge, or otherwise suffer a lien upon or against any interest in the lease or equipment except as permitted in this Paragraph 4. Lessee will cause each unit of equipment to be kept numbered with the identifying number set forth in the attached Schedule and will keep and maintain, plainly, distinctly, and permanently and conspicuously marked on each side of each unit of equipment in letters not less than one inch in height, the words: "NCNB Leasing Corporation, Owner/Lessor pursuant to a Lease Agreement filed with the Interstate Commerce Commission under Section 20c", or "Owned by a Bank or Trust Company under a Security Agreement filed under the Interstate Commerce Act, Section 20c".

Paragraph 10 is deleted and amended as follows: Surrender. As soon as practical on or after the expiration of the original or any extended term of this lease with respect to any unit of equipment, the lessee will (unless such unit is sold to the lessee), at its own cost and expense, at the request of the lessor, deliver possession of such unit to the lessor upon storage tracks that shall not be more than 500 miles from Charlotte, North Carolina, or upon the storage tracks of the Sabine River & Northern Railroad Company with respect to units with road #SRN 5350 through road #SRN 5399 inclusive, or upon the storage tracks of the Valdosta Southern Railroad Company with respect to units with road #VSO 6300 through road #VSO 6349 inclusive. During the period of time during which the equipment is being returned on or after the original or any extended term of this lease, the lessee will pay to the lessor as "holdover rent" for each such unit being returned, the daily equivalent of the rental payment in effect pursuant to this lease on the last rental payment date hereunder for each day elapsed from the date of expiration of the original or any extended term of this lease, as the case may be, to the date each such unit is returned to the lessor pursuant to this Paragraph 10.

This schedule is hereby certified correct and undersigned acknowledges receipt of a copy.

Itel Corporation, Rail Division Lessee/Debtor

By:   
Donald H. Gleason  
Its Vice President

And By: \_\_\_\_\_

Its \_\_\_\_\_

## SCHEDULE "A"

This schedule is to be attached to and becomes part of Schedule To Master Leasedated June 20, 19 78, between the undersigned and NCNB Leasing Corporation

Paragraph 32 is added as follows: Purchase Option. The lessee shall have the right to purchase all but not less than all of the equipment then leased hereunder at the expiration of the original term or of any extended term hereof at a price equal to the then fair market value of such equipment (as hereinafter defined). The lessee shall give the lessor written notice 180 days prior to the end of the term, of its election to exercise the purchase option provided for in this Paragraph. Payment of the option price shall be made at the place of payment of rent in funds then and there current against delivery of a Bill of Sale transferring and assigning to the lessee all right, title, and interest of the lessor in and to the equipment and containing a warranty against liens or claims of persons claiming by, through or under the lessor, except liens and claims which the lessee assumed or is obligated to discharge under the terms of the lease. The lessor shall not be required to make any representation or warranty as to the condition of the equipment or any other matters. The fair market value of a unit of equipment shall be equal in amount to the value which would be obtained in an arm's-length transaction between an informed and willing buyer/user (other than (i) a lessee currently in possession, or (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell. If on or before 60 days prior to the date of purchase elected by the lessee, the lessor and the lessee are unable to agree upon a determination of the fair market value of a unit of equipment, such value shall be determined in accordance with the foregoing definition by a qualified independent appraiser. The term appraiser shall mean such independent appraiser as the lessor and the lessee may mutually agree upon, or, failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the lessor, the second by the lessee and the third designated by the first two so selected.

Paragraph 33 is added as follows: Tax Indemnification. Lessor, as the owner of the equipment, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the "Code"), to an owner of property, including (i) the maximum depreciation deduction with respect to the equipment authorized under Section 167 of the Code (hereinafter called the "ADR Deduction"), and (ii) investment credit equal to 10% of the Purchase Price of the equipment accepted by the lessee in 1978 with respect to the aggregate Purchase Price of the equipment pursuant to Section 38 and related sections of the Code (hereinafter called the "Investment Credit").

This schedule is hereby certified correct and undersigned acknowledges receipt of a copy.

IteI Corporation, Rail Division

Lessee/Debtor

By: Donald H. GleasonIts Vice President

And By: \_\_\_\_\_

Its \_\_\_\_\_

# SCHEDULE "A"

Page 3 of 5

This schedule is to be attached to and becomes part of Schedule To Master Lease

dated June 20, 19 78, between the undersigned and NCNB Leasing Corporation

If there shall be a disallowance, elimination, recomputation, reduction, recapture or disqualification (hereinafter called "Loss"), in whole or in part of such Investment Credit or ADR Deduction, lessee shall, after written request of lessor pay to lessor an additional payment to compensate lessor for (i) the consequent lost cumulative Investment Credit and/or (ii) the consequent lost cumulative deferral of income tax liability resulting from the "ADR Deduction" which may exist thereafter from time to time, as determined by lessor. Such additional payment shall be an amount which, after deduction of federal and state, city and local income taxes, interest and penalties (after giving credit for any savings in respect of any such taxes, penalties and interest by reason of the payment of any other such taxes arising out of this transaction) required to be paid by lessor with respect to the receipt of such additional payment will, in the reasonable opinion of lessor, cause lessor's net yield in respect of such equipment to equal the net yield that lessor would have received if lessor had not suffered a Loss with respect to the Investment Credit or the ADR Deduction. Such additional payment shall be paid no later than the first periodic rental payment due after lessor notifies lessee of the required additional payment.

Notwithstanding the provision of the immediately preceding paragraph of this Paragraph 33, lessee shall not be required to make any payment on account of any Loss with respect to any item of equipment due solely to:

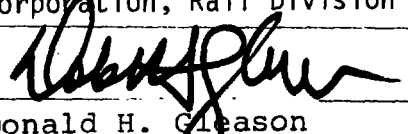
- (a) At any time while such item of equipment is leased hereunder, and while no default under this lease has occurred and is continuing unremedied (without the written consent of lessor), lessor shall transfer (except to lessee) its interest in such item of equipment to anyone or shall otherwise dispose of any interest in such item of equipment, or shall reduce its interest in the profits from such item of equipment, and such transfer, disposal or reduction by lessor shall be the cause of the Loss of the Investment Credit or ADR Deduction;
- (b) The failure to properly claim the Investment Credit or the ADR Deduction in the tax returns filed by lessor or the affiliated group of which it is a member or the failure to follow the proper procedure in claiming the same, and such failure to claim or to follow such procedure, as the case may be, shall preclude lessor from claiming the Investment Credit or ADR Deduction;
- (c) The failure of lessor to have any federal income tax liability against which to apply the Investment Credit or the inability of lessor or the affiliated group of which it is a member to utilize the Investment Credit as a result of the limitation imposed by Section 46 (a)(2) of the Code;
- (d) Any other act solely of lessor which directly causes the Loss of all or part of the Investment Credit or the ADR Deduction; provided, however, that the execution and delivery of this lease and the other documents herein referred to and the carrying out of the transactions contemplated herein and therein in accordance with the terms of this lease and such other documents shall not be deemed to have caused the Loss of such Investment Credit or the ADR Deduction under this sub-paragraph (d).

This schedule is hereby certified correct and undersigned acknowledges receipt of a copy.

Ite1 Corporation, Rail Division

Lessee/Debtor

By:

  
Donald H. Gleason  
Vice President

Its

And By:

Its

# SCHEDULE "A"

Page 4 of 5

This schedule is to be attached to and becomes part of Schedule To Master Lease

dated June 20, 19 78, between the undersigned and NCNB Leasing Corporation

In the event that Internal Revenue Service proposes an adjustment on a United States corporation income tax return of the lessor or the affiliated group of which it is a member which adjustment, if successful, could result in a Loss in whole or in part of Investment Credit or ADR Deduction for which lessee would be required to indemnify lessor, lessor hereby agrees to exercise in good faith its best efforts to avoid such payment.

In furtherance of the above, in the event a claim shall be made by the Internal Revenue Service that the Investment Credit or ADR Deduction should be denied or disallowed, or recaptured, lessor agrees, except as hereinafter provided (i) to promptly notify lessee in writing of such Loss, (ii) not to make payment of the tax claimed for at least 30 days after the giving of such notice and (iii) to give lessee any relevant information relating to such Loss which may be particularly within the knowledge of the lessor; and lessor further agrees to take such action in connection with contesting such claim as lessee shall reasonably request from time to time, including administrative appeals, proceedings, hearings, and conferences with the Internal Revenue Service in respect of such claim and proceedings in the appropriate United States District Court, United States Court of Claims, or the United States Tax Court, including such appeals as are allowable for each such proceeding; provided that:

(a) Within 30 days after notice by lessor to the lessee of such claim, lessee shall make a request that such claim be contested;

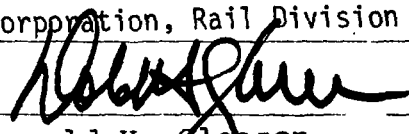
(b) Lessor, at its sole option, may forego any and all administrative appeals, proceedings, hearings, and conferences with the Internal Revenue Service in respect of such claim and may, at its sole option, either pay the tax claimed and sue for a refund in the appropriate United States District Court or the United States Court of Claims as lessor may elect, or contest such claim in the Tax Court of the United States, considering, however, in good faith, any request made by lessee concerning the manner of contesting the claim;

(c) Prior to taking such action, lessee shall have furnished lessor with an Opinion of its tax counsel to the effect that a meritorious ground exists for resisting such claim and describing such ground; and

(d) Lessee shall have indemnified lessor in a manner satisfactory to lessor for any liability or loss with regard to such claim which lessor may incur as the result of contesting such claim, and shall have agreed to pay lessor on demand all costs and expenses which lessor may incur in connection with contesting such claim including, without limitation, (i) reasonable attorney's fees and accountants' fees and disbursements, (ii) the amount of any interest and penalties which may ultimately be payable to the United States Government as the result of contesting such claim, and (iii) in the event lessor shall, in connection with any such claim, pay the tax claimed and then seek a refund, reimburse lessor, on demand, an amount equal to the tax paid plus interest and penalties paid by lessor, if any.

This schedule is hereby certified correct and undersigned acknowledges receipt of a copy.

Itel Corporation, Rail Division Lessee/Debtor

By:   
Donald H. Gleason  
Its Vice President

And By: \_\_\_\_\_

Its \_\_\_\_\_

# SCHEDULE "A"

Page 5 of 5

This schedule is to be attached to and becomes part of Schedule To Master Lease

dated June 20, 19 78, between the undersigned and NCNB Leasing Corporation

If any such claim referred to above shall be made by the Internal Revenue Service and lessee shall have requested lessor to contest such claim as above provided and shall have duly complied with all of the terms hereof, lessee's liability under this Paragraph with respect to such Loss shall become fixed upon final determination of lessor's liability for such Loss. In the event lessee does not request lessor to contest such claim as provided in this Paragraph 33, the liability of lessee shall become fixed to lessor at the time lessor makes payment of the tax attributable to such Loss. In the event any such claim is contested, lessor shall prosecute such contest diligently and in good faith and shall keep lessee informed of the status thereof.

In the event that lessor had paid the tax claimed and received reimbursement therefor from lessee and obtained a refund thereof from the government, such refund together with any interest paid by the government (but not to exceed the amount of lessee's payment to lessor hereunder) shall be paid to lessee promptly after receipt thereof by lessor.

It is understood and agreed that nothing in this Paragraph 33 shall be deemed to impose upon lessee any liability arising out of any claims other than those for which lessee has indemnified lessor relating to the Investment Credit and ADR Deduction. Lessee agrees not to take such action nor file such returns inconsistent with lessor's right to claim the benefits of such deductions, credits, and benefits as provided under the Code.

All of lessor's rights and privileges arising from the indemnities contained in this Paragraph shall survive the expiration or other termination of the lease and such indemnities are expressly made for the benefit of and shall be enforceable by lessor, its successors and assigns.

This schedule is hereby certified correct and undersigned acknowledges receipt of a copy.

Itel Corporation, Rail Division Lessee/Debtor

By: 

Donald H. Gleason  
Its Vice President

And By: \_\_\_\_\_

Its \_\_\_\_\_



# Indemnification and Installation Certificate

To: NCNB Leasing Corporation

Reference is made to the Agreement(s) dated June 20, 1978 between the undersigned and NCNB Leasing Corporation calling for Sixty (60) ~~monthly~~ <sup>quarterly</sup> payments in the amount of \$44,643.60 plus taxes each. We are pleased to confirm to you as follows:

1. All of the equipment described in the above Agreement(s) has been delivered to and received by the undersigned; that all installation or other work necessary prior to the use thereof has been completed; that said equipment has been examined and/or tested and is in good operating order and condition and is in all respects satisfactory to the undersigned and as represented, and that said equipment has been accepted by the undersigned and complies with all terms of the above Agreements. Consequently, you are hereby authorized to pay for the leased equipment in accordance with the terms of any purchase orders for the same.
2. In the future, in the event that said equipment fails to perform as expected or represented we will continue to honor the above Agreement(s) by continuing to make our monthly payments in the normal course of business and we will look solely to the seller or manufacturer for the performance of all covenants and warranties. In addition, we indemnify NCNB Leasing Corporation and hold them harmless from any nonperformance of the aforementioned equipment.
3. We acknowledge that NCNB Leasing Corporation is neither the manufacturer, distributor or seller of the equipment and has no control, knowledge or familiarity with the condition, capacity, functioning or other characteristics of the equipment.

This certificate shall not be considered to alter, construe, or amend the terms of the aforesaid Agreement(s).

Dated this 20th day of June, 1978.

Benny Long  
Witness

Itel Corporation, Bain Division  
(Signature of individual or name of corporation or partnership)  
Donald H. Gleason  
By  
Vice President  
Title

SS.

My commission expires: My Commission Expires October 17, 1981

Doris M. St. Claire  
Notary Public

STATE OF CALIFORNIA )

CITY AND COUNTY OF SAN FRANCISCO )

ss.

On this 20th day of June, 1978, before me personally appeared Donald H. Gleason, to me personally known, who, being by me duly sworn, says that he is Vice President of Itel Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation and that the said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

My commission expires: 4/30/82

(Notary Seal)

Beverly Leong  
Notary Public

